



JAMES E. DARLING, Mayor
VERONICA WHITACRE, Mayor Pro Tem & Commissioner District 6
JAVIER VILLALOBOS, Commissioner District 1
JOAQUIN J. ZAMORA, Commissioner District 2
J. OMAR QUINTANILLA, Commissioner District 3
TANIA RAMIREZ, Commissioner District 4
VICTOR "SEBY" HADDAD, Commissioner District 5

ROEL "ROY" RODRIGUEZ, P.E., City Manager

August 1, 2019

CMRRR# 7019 1120 0000 7728 2023

Samuel Sinyangwe
MuckRock News
Dept. MR 77180
411A Highland Ave.
Somerville, MA 02144-2516

RE: Public Information Request W028772-072519

Dear Mr. Sinyangwe:

This letter responds to your request for information to the City of McAllen, dated and received in our office on 7/24/2019 for Law Enforcement related information.

The City of McAllen has reviewed your request. There are no documents responsive to items 1, 2, 7 & 8. As it relates to item 5, please be informed that the City is requesting an opinion from the Office of the Attorney General for information pertaining to your request. We have enclosed information responsive to Items #3, 4 and 6 to your request.

Therefore, the City will not be able to release the information that you have requested. You may direct any arguments you wish to make to the same address. Should you have any questions, please feel free to call.

Sincerely,


Evaristo Garcia, Jr.
Assistant City Attorney

EGJ/yr

Enclosures – Copy of letter sent to Attorney General (without enclosures)
Items 3, 4 & 6

cc: Attorney General of the State of Texas
Office of the Attorney General
c/o Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

AFFIDAVIT

CASE #

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, the undersigned authority, a Notary Public in and for Hidalgo County, Texas on this day personally appeared Aaron Soto, who after being by me duly sworn, upon her oath, deposes and says:

My name is Aaron Soto DOB [REDACTED] address 1420 El Dora Rd Alamo, Texas, phone number 956-6163657. I am employed at Target located at Las Tiendas shopping center in McAllen, Texas.

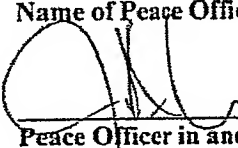
On May 13th 12:45 am I was heading east on 83 and made a wrong turn on 16th st. and was then pulled over by officer Zuniga. Afterwards he asked me step out of the car and to do some sobriety tests which I had denied. He then arrested me and put me in the back of his vehicle. I had complained to him that the handcuffs were too tight and he suddenly pulled me out of his vehicle and slammed me on the road and put me in the back of his car. When I arrived to Mcallen Pd I was informed by several officers that I needed medical attention so I was then transferred to a clinic in mission for treatment. Doctor Pesch told me I had intracranial bleeding and possible major fractures on my left cheekbone. I was then transported to the University of San Antonio hospital for x rays and possible surgery. Mcallen pd left me without my cell phone wallet and shoes. I wish to file a complaint on the officers involved.

Sworn to and subscribed before me, a peace officer while engaged in the performance of my duties and under the authority of Chapter 602.002.Texas Government Code, on this the 10th day of June 2016.


AFFIANT

Sgt. Jesse A. Osornio # 7197

Name of Peace Officer & ID. NO. : (printed)


Peace Officer in and for the City of McAllen,
Hidalgo County, Texas



**CITY OF McALLEN
OFFICE OF THE CHIEF OF POLICE**

Victor Rodriguez
Chief of Police

July 20, 2016

Ms. Rosa Pedraza, Director of Civil Service
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

Re: Ulysses Bautista
Indefinite Suspension

Dear Ms. Pedraza:

You are hereby informed that, pursuant to Chapter 143. Municipal Civil Service Regulations, Section 143.052. Local Government, Officer Ulysses Bautista, hereinafter referred to as Officer Bautista, is suspended from his employment with the City of McAllen Police Department for an indefinite period for violations of laws, rules, regulations and/or policies associated with the following acts(s):

On or about May 13, 2016, at approximately 1:00 a.m., while on-duty, Officer Bautista responded to assist Officer Luis Zuniga who had detained a citizen, herein referred to as Mr. Soto, for suspicion of Driving While Intoxicated/Refusal/Harassment/Resisting Arrest, hereinafter referred to as the instant suspected offense and/or charges. After his detention, Mr. Soto was handcuffed and placed in the back seat of Officer Zuniga's patrol unit. While being strapped in the back seat, Mr. Soto struck Officer Zuniga in the face with spit. Thereafter, Mr. Soto was pulled from the back seat of the patrol unit by Officer Zuniga and thrown to the ground. Officer Bautista proceeded to kick Mr. Soto while Mr. Soto was face down and handcuffed on the ground. In this course, Officer Bautista failed to:

- properly assess the incident in order to determine which non-deadly technique or weapon would best de-escalate the incident and bring it under control in a safe manner;
- use Department approved non-deadly force techniques and issued equipment for the resolution of an incident;
- remain impartial towards all persons coming to the attention of the Department;

- treat all persons taken into custody equally, fairly and with dignity;
- properly care for the safety of the person he takes into custody;
- only use that force that appears reasonably necessary to effectively bring an incident under control while protecting the lives of the officers or others; and
- submit a completed report of Mr. Soto's arrest at the end of his tour of duty.

And/or;

On or about May 13, 2016, Officer Bautista, in the course of performing his official duties as a McAllen Police Officer, submitted an incomplete official report of the instant suspected offense and/or charges involving Mr. Soto;

And/or;

On or about May 13, 2016, Officer Bautista, in the course of performing his official duties as a McAllen Police Officer, and in accordance with Departmental procedures in reporting Use of Force, submitted an incomplete Inter-Departmental Communication (I.D.C.);

And/or;

On or about May 24, 2016, Captain John Freeman informed Officer Bautista that his official report and I.D.C. of the incident that occurred on or about May 13, 2016, regarding the instant suspected offense and/or charges involving Mr. Soto were incomplete. Captain John Freeman ordered Officer Bautista to submit an I.D.C. regarding the full extent of his participation and knowledge of the incident;

And/or;

On or about May 26, 2016, Officer Bautista, failed to make a written statement with truthful, correct, and complete information regarding the full extent of his participation and knowledge and failed to reveal every relevant fact, which either directly or indirectly, and narrowly relates to his conduct into certain allegations of misconduct on his part in these matters, as ordered by Captain John Freeman;

And/or;

On or about July 5, 2016, Officer Bautista was notified that the department was conducting a personnel investigation into certain allegations of misconduct on his part regarding the use of force. Officer Bautista was issued a special order by the Chief of Police to give a statement in this matter. This order, in part, required Officer Bautista to answer questions and make a written statement regarding the full extent of his participation and knowledge and to reveal every relevant fact, which either directly or indirectly, and narrowly related to his duties and responsibilities as an employee.

And/or;

On or about July 7, 2016, in response to the above-described order dated July 5, 2016, Officer Bautista failed to answer questions and make a written statement with truthful, correct, and complete information regarding the full extent of his participation and knowledge and failed to reveal every relevant fact, which either directly or indirectly, and narrowly relates to his conduct into certain allegations of misconduct on his part in these matters.

Officer Bautista had a duty and a responsibility to the citizens of McAllen and his fellow employees to:

- not commit acts of incompetence;
- not neglect his duties;
- not be discourteous to the public or to a fellow employee while the firefighter or police officer is in the line of duty;
- not conduct himself in a manner prejudicial to good order;
- not violate an applicable police department rule or special order;
- maintain a professional manner of conduct;
- not perform any acts which tend to reflect unfavorably, adversely affect, lower, or destroy public respect and confidence in the department or bring the department into disrepute or ridicule or which reflect discredit upon the employee, the Department, or law enforcement as a profession;
- not perform any acts that tend to impair the operation or efficiency of the department or any employee of the department;
- not cause to make a false report, false statement, or false official police report concerning an investigation, an officer or employee of the Department, or the business of the Department;
- not knowingly omit, or cause to be omitted, any information which is required to be recorded in any Departmental report;
- be orderly, effective, efficient, and in a manner that affords courtesy and respect to all personnel;
- obey any lawful order issued by a superior officer;
- not disobey, disregard, or ignore any written or verbal order from any supervisor or superior officer or violate any Departmental rule, regulation, or policy, or fail to obey any Special orders from the Chief of Police or a Director;

- be orderly, effective, efficient and in a manner that affords respect and courtesy to all subordinate and superior personnel;
- accord respect to a commander, superior, or supervisor at all times;
- conduct himself both professional and orderly;
- be courteous and orderly in his dealings with the officers, employees of the department, and members of the general public;
- submit complete reports;
- not make false official reports, or enter or cause to be entered in any Department book, record or reports any inaccurate, false, or improper police information or other material matter;
- treat all persons taken into custody equally, fairly and with dignity;
- be responsible for the safety of persons he takes into custody;
- only use that force that appears reasonably necessary to effectively bring an incident under control while protecting the lives of the officers or others;
- properly assess the incident in order to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner;
- use Department approved non-deadly force techniques and issued equipment for resolution of incidents;
- give truthful, correct, and complete statements involving their knowledge of occurrences being investigated;
- not withhold information from, or fail to cooperate with, internal investigations or fail to report misconduct of employees; and/or
- to abide by laws, rules, and regulations governing his conduct.

On July 12, 2016, Officer Bautista was provided notification of contemplated disciplinary action up to and including indefinite suspension and notification of a scheduled meeting with him and his chosen representative on July 14, 2016. The meeting was scheduled to discuss the alleged misconduct and violation of laws, rules, regulations, and/or policies as hereinbefore stated.

The meeting scheduled for July 14, 2016, was rescheduled for July 15, 2016, at the request of Officer Bautista's representative, Mr. David Willis.

The meeting of July 15, 2016, and continuing on July 20, 2016, was for a due process hearing in each of these matters. The hearing is also known as *Loudermill* hearing. The hearing was scheduled to provide Officer Bautista an opportunity to present his view of the matters brought before this office before a determination on these matters was made and to provide Officer Bautista an opportunity to provide his view as to why disciplinary action up to and including indefinite suspension should not occur in each of these matters. The value of Officer Bautista's participation in this hearing is to assist in the accuracy of the decision and appropriateness and necessity for disciplinary action up to and including indefinite suspension.

At this meeting, Officer Bautista was fully informed of the above allegations and was given a full opportunity to respond and present evidence on his behalf before a decision was made on disciplinary action.

Attorney David Willis was present for the due process hearing in each of these matters as Officer Bautista's representative.

Additionally, Sergeant Jesus Osornio, Detective Jose M. Hernandez and Detective Juan F. Trevino of the Office of Professional Responsibility were also present at the meeting.

At this meeting, Officer Bautista acknowledged that:

- He received adequate notice of the due process meeting of July 15, 2016;
- Acknowledged using physical force against Mr. Soto, but states that such was to "assist" Officer Zuniga;
- He believed that Mr. Soto "lunged at Officer Zuniga" causing him to react;
- "My action[kicking Mr. Soto] was a reaction at the time";
- "It was the wrong thing to do, I should not have done it, but I did it[kicked Mr. Soto]";
- "It was not meant to cause him pain";
- It was..."obviously the wrong thing";
- [I] "didn't do it with malice or cause harm";
- "I apologize for my actions";
- [I] "not saying that it was the right decision";
- [There is] "nothing I can do to change it, it happened"; and
- He had learned from this incident; however he

- failed to account for misleading, false, and/or incomplete reports void of relevant facts; and/or
- failed to account for his insubordinate acts.

Additionally, department records reflect that:

- On or about May 13, 2016, at approximately 1:00 a.m., while on-duty, Officer Bautista responded to assist Officer Luis Zuniga who had detained Mr. Soto for suspicion of the instant suspected offense and/or charges;
- After his (Mr. Soto) detention, Mr. Soto was handcuffed and placed in the back seat of Officer Zuniga's patrol unit;
- While being strapped in the back seat, Mr. Soto struck Officer Zuniga in the face with spit;
- Thereafter, Mr. Soto was pulled from the back seat and thrown to the ground;
- Officer Bautista proceeded to kick Mr. Soto while Mr. Soto was faced down on the ground and handcuffed;
- Officer Bautista failed to properly assess the incident in order to determine which non-deadly technique or weapon would best de-escalate the incident and bring it under control in a safe manner;
- Officer Bautista failed to use Department approved non-deadly force techniques and issued equipment for the resolution of an incident;
- Officer Bautista failed to treat all persons taken into custody equally, fairly and with dignity;
- Officer Bautista failed to properly care for the safety of the person taken into custody;
- Officer Bautista failed to only use that force that appears reasonably necessary to effectively bring an incident under control while protecting the lives of the officers or others;
- Officer Bautista failed to submit a completed report of Mr. Soto's arrest at the end of his tour of duty;
- Mr. Soto did not lunge or fallen out of the patrol unit, as reported by Officer Bautista.
- Mr. Soto was pulled from the back seat of the patrol unit and thrown to the ground, and Officer Bautista proceeded to kick Mr. Soto while Mr. Soto was faced down on the ground and handcuffed.

- Mr. Soto suffered injury due to Officer Bautista's actions;
- On or about May 13, 2016, Officer Bautista, in the course of performing his official duties as a McAllen Police Officer, submitted an incomplete official report of the instant suspected offense and/or charges involving Mr. Soto;
- On or about May 13, 2016, Officer Bautista, in the course of performing his official duties as a McAllen Police Officer, and in accordance with Departmental procedures in reporting Use of Force, submitted an incomplete Inter-Departmental Communication (I.D.C.);
- On or about May 24, 2016, Captain John Freeman informed Officer Bautista that his official report and I.D.C. of the incident that occurred on or about May 13, 2016, regarding the instant suspected offense and/or charges involving Mr. Soto were incomplete. Captain John Freeman ordered Officer Bautista to submit an I.D.C. regarding the full extent of his participation and knowledge of the incident;
- On or about May 26, 2016, Officer Bautista, failed to make a written statement with truthful, correct, and complete information regarding the full extent of his participation and knowledge and failed to reveal every relevant fact, which either directly or indirectly, and narrowly relates to his conduct into certain allegations of misconduct on his part in these matters, as ordered by Captain John Freeman;
- On or about July 5, 2016, Officer Bautista was notified that the department was conducting a personnel investigation into certain allegations of misconduct on his part regarding the use of force. Officer Bautista was issued a special order by the Chief of Police to give a statement in this matter. This order, in part, required Officer Bautista to answer questions and make a written statement regarding the full extent of his participation and knowledge and to reveal every relevant fact, which either directly or indirectly, and narrowly related to his duties and responsibilities as an employee;
- On or about July 7, 2016, in response to the above-described order dated July 5, 2016, Officer Bautista failed to answer questions and make a written statement with truthful, correct, and complete information regarding the full extent of his participation and knowledge and failed to reveal every relevant fact, which either directly or indirectly, and narrowly relates to his conduct into certain allegations of misconduct on his part in these matters; and/or
- That Officer Bautista's misconduct has caused and undue fiscal and service burden to the citizens of McAllen.

Officer Bautista's conduct constitutes:

- acts of incompetence;

- neglect his duties;
- discourtesy to the public or to a fellow employee while the firefighter or police officer is in the line of duty;
- conduct prejudicial to good order;
- a violation of applicable police department rule or special order;
- failure to maintain a professional manner of conduct;
- acts which tend to reflect unfavorably, adversely affect, lower, or destroy public respect and confidence in the department or bring the department into disrepute or ridicule or which reflect discredit upon the employee, the Department, or law enforcement as a profession;
- acts that tend to impair the operation or efficiency of the department or any employee of the department;
- a false report, false statement, or false official police report concerning an investigation, an officer or employee of the Department, or the business of the Department;
- knowingly omit, or cause to be omitted, any information which is required to be recorded in any Departmental report;
- failure to be orderly, effective, efficient, and in a manner that affords courtesy and respect to all personnel;
- failure to obey any lawful order issued by a superior officer;
- disobeying, disregarding, or ignoring any written or verbal order from any supervisor or superior officer or violating any Departmental rule, regulation, or policy, or failing to obey any Special orders from the Chief of Police or a Director;
- failure to be orderly, effective, efficient and in a manner that affords respect and courtesy to all subordinate and superior personnel;
- failure to accord respect to a commander, superior, or supervisor at all times;
- failure to conduct himself both professional and orderly;
- failure to be courteous and orderly in his dealings with the officers, employees of the department, and members of the general public;
- failure to submit complete reports;

- false official reports, or enter or cause to be entered in any Department book, record or reports any inaccurate, false, or improper police information or other material matter;
- failure to treat all persons taken into custody equally, fairly and with dignity;
- failure to secure the safety of the persons taken into custody;
- failure to only use that force that appears reasonably necessary to effectively bring an incident under control while protecting the lives of the officers or others;
- failure to properly assess the incident in order to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner;
- failure to use Department approved non-deadly force techniques and issued equipment for resolution of incidents;
- failure to give truthful, correct, and complete statements involving their knowledge of occurrences being investigated;
- withholding information from, or failing to cooperate with, internal investigations or failing to report misconduct of employees; and
- failure to abide by laws, rules, and regulations governing his conduct.

Such conduct is in violation of the following:

CHAPTER 143, TEXAS LOCAL GOVERNMENT CODE:

Section 143.051: Cause for Removal or Suspension, which, in part, provides that:

- (a) A commission rule prescribing cause for removal or suspension of a firefighter or police officer is not valid unless it involves one of more of the following grounds:

...

(3) acts of incompetency;

(4) neglect of duty;

(5) discourtesy to the public or to a fellow employee while the firefighter or police officer is in the line of duty;

...

(8) conduct prejudicial to good order;

...

(12) violation of an applicable fire or police department rule or special order.

And/or;

City of McAllen Civil Service Commission Rules and Regulations:

Chapter X, Disciplinary Procedures Sec. 10.01, Cause for Removal or Suspension, which, in part, provides causes for removal or suspension including:

...

- c. Acts of incompetency.
- d. Neglect of duty.
- e. Discourtesy by the employee to the public or to a fellow employee while in the line of duty.
- ...
- h. Conduct prejudicial to good order.
- ...
- i. Violation of any applicable fire or police department rule or special order.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 9, PERSONAL CONDUCT, which, in part, provides the following rules, regulations, and policies:

...

II. POLICY

Personal conduct of employees of this Department, whether on or off duty, reflect not only upon that person but also on the Department as a whole; law enforcement as a profession; and the City as an organization. It is every member's responsibility to maintain a professional manner of conduct. It is the Department's responsibility to ensure that a standard of conduct is maintained...

III. PROCEDURES

A. Acts or Statements

- 1. Employees of the Department shall not perform any acts which tend to reflect unfavorably, adversely affect, lower, or destroy public respect and confidence in the department or bring the department into disrepute or

ridicule or which reflect discredit upon the employee, the Department, or law enforcement as a profession.

...

3. Employees of the Department shall not perform any acts that tend to impair the operation or efficiency of the department or any employee of the department.

...

E. False Official Reports

1. No employee of the Department will cause to make a false report, false statement, or false official police report concerning an investigation, an officer or employee of the Department, or the business of the Department.
2. No employee of the Department shall knowingly omit, or cause to be omitted, any information which is required to be recorded in any Departmental report.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 11, ORDERS, which, in part, provides the following rules, regulations, and policies:

...

II. **POLICY**

...obedience of orders must be orderly, effective, efficient, and in a manner that affords courtesy and respect to all personnel...

III. **PROCEDURES**

...

C. Obeying Orders

1. All Department employees will promptly obey any lawful order issued by a superior officer.
- ...
4. Disobeying, disregarding, or ignoring any written or verbal order from any supervisor or superior officer or violating any Departmental rule, regulation, or policy, or failing to obey any Special orders from the Chief of Police or a Director shall be grounds for disciplinary action.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 12, CONDUCT TOWARD SUPERIORS, which, in part, provides the following rules, regulations, and policies:

...

II. **POLICY**

Subordinate – Superior conduct must be orderly, effective, efficient and in a manner that affords respect and courtesy to all subordinate and superior personnel...

III. **PROCEDURES**

A. Respect to Superiors

1. Every officer or employee will accord respect to a commander, superior, or supervisor at all times.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 13, CONDUCT ON DUTY, which, in part, provides the following rules, regulations, and policies:

...

II. **POLICY**

On duty conduct must be both professional and orderly.

III. **PROCEDURE**

...

C. Personal Conduct

1. Officers and employees of the Department shall be courteous and orderly in their dealings with the officers, employees of the department, and members of the general public. They shall perform their duties without using harsh, violent, profane, or insulting language. To the best of their ability, they must remain calm in the face of adverse provocation...

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 40, REPORT WRITING POLICY, which, in part, provides the following rules, regulations, and policies:

...

II. POLICY

Written reports (offense, arrest, incident, accident, impoundment, traffic citations, administrative) may be one of the most important tools a police officer and employees of the Department have...Written reports cast a reflection on the department's professionalism and are a direct reflection of the officer's or employee's dedication and professionalism.

III. PROCEDURE

A. General rules concerning reports:

...

11. Department employees shall submit complete reports. Complete reports shall include all information reported, learned or discerned by the report preparer.

...

C. False reports or entries

No member of the Department shall make false official reports, or enter or cause to be entered in any Department book, record or reports any inaccurate, false, or improper police information or other material matter.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 49, ARREST AND HANDLING OF PRISONERS, which, in part, provides the following rules, regulations, and policies:

...

II. POLICY

It is the policy of this Department that all persons taken into police custody be treated equally, fairly and with dignity. Further, it is the Department's policy that all persons be afforded their constitutional rights and civil rights concerning their treatment...

III. PROCEDURE

...

D. Illness and Injuries to Prisoner

1. The arresting officer is responsible for the safety of persons he takes into custody.

And;

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 50, **USE OF FORCE**, which, in part, provides the following rules, regulations, and policies:

...

II. POLICY

This Department recognizes and respects the value and special integrity of each human life. In vesting police officers with the authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this Department that police officers shall only use that force that appears reasonably necessary to effectively bring an incident under control while protecting the lives of the officers or others.

IV. PROCEDURES

...

D. Parameter for use of non-deadly force.

1. Where deadly force is not authorized, officers should assess the incident in order to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
2. Police officers are authorized to use Department approved non-deadly force techniques and issued equipment for resolution of incidents, as follows:
 - a. To protect themselves or another from physical harm; or
 - b. to restrain or subdue a resistant individual; or
 - c. To bring an unlawful situation safely and effectively under control.

McAllen Police Department Rules, Regulations, and Policy Manual:

Section 64, **MISCONDUCT INVESTIGATIONS**, which, in part, provides the following rules, regulations, and policies:

...

II. POLICY

Disciplinary action and misconduct investigations must be orderly, effective, efficient and in a manner that affords and accords courtesy to all personnel...

III. PROCEDURES

...

H. Cooperation in Misconduct Investigations

1. All employees shall give truthful, correct, and complete statements involving their knowledge of occurrences being investigated.
2. Employees who withhold information from, or fail to cooperate with, internal investigations or who fail to report misconduct of employees are subject to disciplinary action in addition to any other disciplinary action that may result from the investigation.

Officer Bautista's conduct on or about May 13, 2016, May 24, 2016, May 26, 2016, July 5, 2016 and July 7, 2016 are grounds for cause for removal or suspension as provided in Chapter 143, Local Government Code, the City of McAllen Civil Service Commission Rules and Regulations, and the Collective Bargaining Labor Agreement Between the City of McAllen and the McAllen Police Association.

Based on the facts presented to me regarding the violations of Chapter 143, Texas Local Government Code, City of McAllen Civil Service Commission Rules and Regulations, and the McAllen Police Department Rules, Regulations, and Policy Manual as herein before stated, I find the allegations sustained.

I so informed Officer Bautista at the hearing, also known as *Loudermill* hearing, of July 15, 2016, and continuing on July 20, 2016.

I further informed Officer Bautista that I would next consider what disciplinary action to take in these matters and that each of his acts of his misconduct related to these matters merited a disciplinary suspension for a period in excess of fifteen (15) calendar days and that a suspension for a period in excess of fifteen (15) calendar days constituted an indefinite suspension. Officer Bautista was also informed that an indefinite suspension is equivalent to dismissal from the department.

Upon making these determinations, I next considered what disciplinary action to take in these matters.

As part of this consideration, Officer Bautista's record, including information maintained by the department pursuant to Section 143.089(g), Municipal Civil Service For Firefighters and Police Officers, Texas Local Government Code, was reviewed.

This review reflects that, during his tenure as a police officer at the City of McAllen Police Department, Officer Bautista has been addressed for varying misconduct matters on four (4) different occasions.

Officer Bautista has demonstrated a pattern of misconduct, a pattern of misconduct for repeated violations and a pattern of misconduct that escalates both in frequency and seriousness.

That pattern of misconduct includes Officer Bautista making false official reports. Officer Bautista's use of force on Mr. Soto, while Mr. Soto was faced down on the ground and handcuffed, was wholly unnecessary. All of Officer Bautista's reporting related to these matters are misleading, false, incomplete and/or lack relevant facts. Where certain reports were required, none were filed.

In further assessing what disciplinary action to take in these matters, I find that these violations of laws, rules, policies and/or regulations are particularly egregious for reasons above stated.

Further, Officer Bautista, on repeated occasion and while under orders from the Department Head, failed to make a written statement with truthful, correct, and complete information regarding the full extent of his participation and knowledge and failed to reveal every relevant fact, which either directly or indirectly, and narrowly relates to his conduct into certain allegations of misconduct on his part in these matters.

All orders, laws, rules and/or regulations governing Officer Bautista's conduct were lawful, necessary and required.

These violations and each of the foregoing acts are intolerable conduct from a person charged with the protection of lives and property of the general public and each violation merits the disciplinary action outlined herein. Where every violation cited was a lawful order, law, rule and/or regulation governing his conduct, the violation of these lawful orders, laws, rules and/or regulations cannot be tolerated at the McAllen Police Department.

The existence of our department and the safety of the lives and property of our citizens, employees, and our officers require our community's unshaken trust and confidence that each of our officers can perform his/her duties without risk to the integrity of that service. Officer Bautista has breached that trust and confidence. Officer Bautista cannot be allowed to imperil that trust and confidence for the entirety of the McAllen Police Department. An indefinite suspension from the department is the only disciplinary action that assures such for our community and our department. An indefinite suspension is equivalent to dismissal from the department.

On this date, Officer Bautista declined an offer to resign his employ with the City of McAllen Police Department.

Therefore, as head of this department, it is my order that Officer Ulysses Bautista be indefinitely suspended from his employ with the City of McAllen Police Department effective at 2:30 PM July 20, 2016.

An indefinite suspension is equivalent to dismissal from the department.

Officer Ulysses Bautista is herein informed that he may appeal this disciplinary action by filing a written notice of appeal with the Director of Civil Service no later than the 10th day after receipt of this letter.

Officer Ulysses Bautista is further informed that if he chooses, he may within the same time period elect to appeal to an independent third party hearing examiner instead of the Commission and that if he elects to appeal to a hearing examiner, he will waive all rights of appeal to a district court except for certain limited circumstances as provided in section 143.057(j), Texas Local Government Code.

If you have any questions regarding this matter please contact me.

Respectfully,


Victor Rodriguez
Chief of Police

XC: Mr. Ulysses Bautista, Police Officer
McAllen Police Department

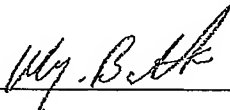
Mr. Roel Rodriguez, City Manager
City of McAllen

Mr. Kevin Pagan, City Attorney
City of McAllen

File Copy

Certification of Receipt of Notice

Officer Ulysses Bautista certifies that a true copy of the above letter of disciplinary action was personally delivered to him as required by Section 143.052, Texas Local Government Code.

Sign: 

Date: 7-20-16



COLLECTIVE BARGAINING LABOR AGREEMENT

Between The

CITY OF McALLEN, TEXAS

And The

McALLEN POLICE ASSOCIATION

COVERING

Effective October 1, 2015 through September 30, 2020

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ARTICLE 1. PURPOSE OF AGREEMENT

Section 1. It is the intent and purpose of this Agreement, entered into by and between the CITY OF MCALLEN hereinafter referred to as the "CITY" and the McALLEN POLICE ASSOCIATION, the representative of all of the McAllen Police Officers selected to represent these officers for purposes of collective bargaining, hereinafter referred to as the "UNION" to achieve and maintain harmonious relations between the parties in order to provide for an equitable and orderly process that addresses salaries, working conditions, and employee-employer working relations that may arise during the term of this Agreement.

ARTICLE 2. AUTHORITY AND TERM

Section 1. Whenever wages, rates of pay, or any other matters requiring appropriation of monies by the Employer are included as a matter of collective bargaining, it shall be the obligation of the Union to serve written notice of the report for collective bargaining on the Employer at least one hundred-twenty (120) days prior to the conclusion of the Employer's fiscal year;

Section 2. It shall be the obligation of the parties to meet at a reasonable time and confer in good faith, preferably within thirty (30) days after receipt of written notice from the Union, for purposes of collective bargaining. The initial meeting shall be for the purpose of setting dates and procedures for negotiations and shall not be considered a collective bargaining session for purposes of any applicable statutory dates or deadlines.

Section 3. Except as otherwise provided for herein, this Agreement shall be effective as of the date signed and executed by both parties, through September 30, 2020.

ARTICLE 3. RECOGNITION

Section 1. The City recognizes the Union as the sole and exclusive bargaining agent for all Police Officers as the term is defined in Chapter 174, Texas Local Government Code, with the sole exception of the Chief of Police. The term Police Officers includes only permanent non-probationary paid employees of the McAllen Police Department who have been hired in substantial compliance with provisions of the Texas Local Government Code, Chapter 143, but does not include civilians or other City of McAllen employees.

Section 2. The Union recognizes the City Manager or his designated representative or representatives as the sole representative of the City for the purpose of collective bargaining. The Union and the City agree to bargain in good faith on those matters which are subject to collective bargaining and are presented by either party for collective bargaining.

ARTICLE 4. PREVAILING RIGHTS

Section 1. No employee shall be unfavorably affected by the signing of this agreement as to wages, hours, or other conditions of employment that he now enjoys, except as otherwise covered in this agreement.

ARTICLE 5. MANAGEMENT RIGHTS

Section 1. The Employer has the right to create and implement departmental rules and regulations. Employees shall receive copies of such rules and regulations upon publication. The Union may be called upon by the Police Chief to provide information and advice concerning the Police Chief's decision-making process regarding such rules and regulations. Such rules and regulations are to be provided within a reasonable time.

Section 2. Except as otherwise specifically provided in this Agreement, the Union recognizes that the City has the sole and exclusive right to exercise all the rights or functions of management. The term "rights or functions of management" shall include but not be limited to:

- A. Direct the work of its employees to include the scheduling and assignment of overtime work.
- B. Hire, promote, demote, transfer, assign and retain employees in positions within the City, subject to applicable Civil Service regulations.
- C. Suspend or discharge employees for just cause.
- D. Maintain the efficiency of governmental operations.
- E. Relieve employees from duties because of lack of work or other reason subject to Civil Service regulations.
- F. Utilize the Police Department in emergency situations to protect life and property.
- G. Determine the methods, processes, means, and personnel by which operations are to be carried out.
- H. The determination of safety, health and property protection measures for the Police Department.
- I. The selection, promotion or transfer of police officers to supervisory or other managerial positions subject to the provisions of Chapter 143, Texas Local Government Code.
- J. The determination of policy affecting the selection or training of the police officers.
- K. The establishment, modification and enforcement of police department rules, regulations and orders.
- L. The assignment of work from one position to another within the Classified Service of the Police Department subject to the provision of Chapter 143, Texas Local Government Code.
- M. The determination of the number of ranks and number of police officers within each rank in accordance with the provision of Chapter 143, Texas Local Government Code.
- N. The transfer of police officers from one house, district, or subdivision to another.

- O. The scheduling of operation and the determination of the number and duration of hours of assigned duty per week.

Section 3. The Police Chief may appoint each person occupying an authorized position in the classification immediately below that of the Police Chief. A person appointed to such position must:

- A. Be employed by the municipality's police department as a sworn police officer;
- B. Have at least two years' continuous service in that department as a sworn police officer; and
- C. Be eligible for certification by the Texas Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that commission and must have served as a bona-fide law enforcement officer for at least five years.

Section 4. A person appointed under this section serves at the pleasure of the Police Chief and, not with standing any other provision of this agreement, all hours and other conditions of employment regarding such positions shall be subject to change or creation by the Police Chief in his sole unfettered discretion. A person who is removed from the position by the Police Chief shall be reinstated in the department and placed in the same classification, or its equivalent, that the person held before appointment. The person retains all rights of seniority in the department.

Section 5. If a person appointed under this section is charged with an offense in violation of civil service rules and indefinitely suspended, the person has the same rights and privileges of a hearing before the commission in the same manner and under the same conditions as a classified employee. If the commission, a hearing examiner, or a court of competent jurisdiction finds the charges to be untrue or unfounded, the person shall immediately be restored to the same classification, or its equivalent, that the person held before appointment. The provisions of this section shall take precedence over inconsistent or conflicting terms or any law, rules or regulations (e.g., Texas Local Government Code, Chapters 141, 142, 143, et. Seq., as amended).

ARTICLE 6. CIVIL SERVICE RULES

Section 1. By entering into this Agreement, the Union and the City recognize and agree that the provisions of this collective bargaining agreement shall take precedence over applicable provisions of Sections 142.0015 and 142.0016 and Chapters 142 and 143, Texas Local Government Code or Local Civil Service Rules and Regulations.

ARTICLE 7. PAYROLL DEDUCTION OF DUES/BULLETIN BOARDS

Section 1. The City shall deduct on a regular basis dues from the pay of all police officers who hereafter voluntarily authorizes dues deductions in writing on a form provided by the City.

Section 2. The Union initially notifies the City as to the amount of the dues fees to be deducted. Such notification will be certified by the City in writing over signature of the authorized officer or officers of the Union.

Section 3. The Union shall indemnify, defend and hold the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or as a result from any conduct taken by the City for the purpose of Complying with Section 1 of this Article including the negligence of the City and its officers or employees.

Section 4. It is understood by the City and the Union that payroll deduction of dues described above shall be for the period of the existence of an executed Agreement between the City and the Union. The City shall not grant payroll deduction or direct deposit of dues to any employee organization that is eligible to be the bargaining agent for the McAllen Police Officers without the express written consent of the Union.

Section 5. The City shall grant the Union direct deposit for all deductions collected for the purpose of complying with Article on the Union's behalf at City's actual cost.

Bulletin Boards

Section 1. The City shall permit the Union reasonable space for one bulletin board at the McAllen Public Safety Building at the Union's cost. The City shall not grant approval of a bulletin board to any employee organization eligible to be the bargaining agent for the McAllen Police Officers without the express written permission of the Union.

Section 2. The Union will only post notices of Union meetings, Union recreational and social affairs, notices of Union elections and appointments and results of Union elections, all of which pertain to the Union, provided that such notices are delivered to the Chief of the Department prior to posting. Any postings of an inflammatory nature, including but not limited to derogatory material pertaining to the City, its management, employees or elected officials, are expressly prohibited. There shall be no posting regarding any political candidate or candidates nor of any political matter (Section 143.071 and 143-086, Texas Local Government Code).

ARTICLE 8. INSURANCE

Section 1. The City shall provide all classified employees of the McAllen Police Department with hospitalization and medical insurance policies equivalent to that of the other city employees.

Section 2. Life insurance: shall be provided at no charge to the employee for an amount of two times the employee's salary or to a maximum of \$100,000.00.

Section 3. Retired employee insurance: The City shall allow T.M.R.S. retired employees to be eligible for group health care benefits under provisions of law or applicable insurance contract. The benefits of such insurance shall be the same as for the active employees, as such benefits may be increased or decrease from time to time. The retiring employee must notify the City at least thirty (30) days prior to retiring, of his/her intention to continue to be a participant in the group health program.

Section 4. The City shall pay on behalf of all police officers who have retired with at least twenty-five (25) years of service as police officer with the City, and on behalf of any previously enrolled and eligible retiree dependents, Fifty Percent (50%) of the premium charged by the City for employee and dependent group health insurance. Employees who retire after the effective date of this Agreement but before October 1, 2011, shall similarly have Fifty Percent (50%) of the group health premium paid for themselves and for any previously enrolled and eligible dependents. Provided not revised or deleted in subsequent contract negotiations, such payment by the City shall continue until the retired officer becomes eligible for Medicare, or until the retired officer becomes eligible under another employer's group health plan, whichever occurs first. Employees who retire on or at any time after October 1, 2011 will pay the full premium for themselves and for any previously enrolled and eligible dependents, the same as other non-police officer retirees.

A. Notwithstanding the above requirements, the City will, following ratification of this Agreement, pay Fifty Percent (50%) of the group health premium on behalf of retired Officer Harold Taylor and for any previously enrolled and eligible dependents, on the same terms as such payment is made on behalf of officers who retired prior to September 30, 2011.

ARTICLE 9. OVERTIME AND CALL BACK

Section 1. All hours worked in excess of forty (40) hours per work week, shall be paid at the rate of one and one-half (1 ½) times the employees regular rate of pay.

Section 2. Employees who are called back to work when off duty shall be guaranteed a minimum of two (2) hour at a rate consistent with the hours worked during the current work period.

Section 3. Any pay under a grant program will be paid at the rate designated in the grant.

ARTICLE 10. SICK LEAVE

Section 1. All sick leave accruals shall be covered by applicable provisions of the Texas Local Government Code, Chapter 143.

Section 2. Accumulated sick leave will be paid to terminating or retiring personnel based on the following:

1 – 5 years of service	-----	15 days paid total
6 – 10 years of service	-----	30 days paid total
11 – 15 years of service	-----	60 days paid total
16 – 20 years of service	-----	90 days paid total
Over 21 years of service	-----	120 days paid total

ARTICLE 11. FUNERAL LEAVE

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Section 1. During the five calendar days following the date of the death of an immediate family member, members of the department shall be granted three (3) working calendar days special leave of absence with pay. The term immediate family shall include: father, mother, grandparent, wife, husband, son, daughter, sister, brother, or grandchildren of either an employee or an employee's spouse.

Section 2. In the event the employee is on any form of authorized leave during the five calendar days following the date of the death of an immediate family member, no special leave with pay shall be granted.

Section 3. All leaves under this clause shall be approved by the Chief or his designated representatives.

ARTICLE 12. HOLIDAYS

Section 1. The following holidays shall be official holidays for the police officers of the McAllen Police Department:

- 1) New Year's Day (January 1st);
- 2) Good Friday;
- 3) Memorial Day;
- 4) Fourth of July (July 4th);
- 5) Labor Day,
- 6) Thanksgiving Day;
- 7) Christmas Eve (December 24th);
- 8) Christmas Day (December 25th); and,
- 9) One floating personal day as per City's SOP.

Section 2. Employees who are designated to work during an official holiday shall be compensated at a rate of two and one-half (2-1/2) their regular rate. If an official holiday falls on an employee's day off, the employee shall be compensated eight (8) hours of pay at the employee's regular rate.

ARTICLE 13. VACATION

Section 1. Vacation allowance shall be earned annually (based upon a monthly accumulation) based upon the following schedule:

- 1) Fifteen (15) days vacation with pay after completion of one (1) year of continuous service with the McAllen Police Department earned at a rate of one and one-fourth (1-1/4) days per month.

- 2) Eighteen (18) days of vacation with pay after completion of fifteen (15) years of continuous service with the McAllen Police Department earned at a rate of one and one-half (1½) days per month.
- 3) Twenty (20) days of vacation with pay after completion of twenty (20) years of continuous service with the McAllen Police Department earned at a rate of one and two-thirds (1 2/3) days per month.

Section 2. Employees are permitted to carry a maximum of twenty-four (24) vacation days over from one calendar year to the next.

Section 3. Vacation time off will be granted in accordance with policy as established by the Chief of Police.

ARTICLE 14. CLASSIFICATION

Section 1. The Police Department will have the following four (4) classifications:

- 1) Captain (Position immediately below Chief) 3 Positions Maximum
- 2) Lieutenant
- 3) Sergeant
- 4) Police Officer

Section 2. Classifications of Police Officer, Sergeant, and Lieutenant shall remain as non-exempt employees, and authorized strength of each shall be as determined by applicable City ordinance.

ARTICLE 15. WORKING OUT OF CLASSIFICATION

Section 1. Whenever a police officer is required to serve as an acting supervisor (sergeant or above) for a minimum of three (3) full consecutive days, the officer shall be compensated at the rate that position or rank while so acting. The higher pay will be authorized, along with the officers' normal longevity pay, upon the completion of the third full working day in the acting rank and shall be retroactive to the first day in which the acting rank was authorized and assumed.

Section 2. All acting assignments shall be authorized by the Chief of Police.

ARTICLE 16. EVERGREEN CLAUSE/SAVINGS CLAUSE

Section 1. Evergreen Clause. In the event the City and the Union are unable to reach an agreement on new contract terms prior to the expiration date of this Agreement as stated in Article 2 and both parties agree to extend negotiations beyond such expiration date, this Agreement will automatically be extended co-extensive with such negotiation period and all terms of current Agreement shall remain in full force and effect until impasse is reached or a new contract becomes effective, whichever occurs first.

Section 2. The City agrees to commence negotiations at least sixty days before the expiration date of this Agreement if the Union has requested negotiations as required under Chapter 174 and if the City does not commence negotiations in such time limit the negotiation period will be extended by the number of days between such 60th day and the date the City enters into such negotiations.

Section 3. Savings Clause. If any provisions of this agreement or application of such provisions should be rendered or declared invalid by any court of competent jurisdiction or by any existing or subsequently enacted legislation, the remaining parts or portions of this agreement shall remain in full force and in effect for the duration of this agreement.

ARTICLE 17. SUCCESSORS AND ASSIGNS

Section 1. This Agreement shall be binding upon the successors and assignees of the parties hereto during the term of this Agreement and no provisions, terms or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by any respect whatsoever by any change of any kind in the ownership or management of either party hereto or by any change geographically of place of business of either party hereto.

ARTICLE 18. DEFINITIONS

City - The City of McAllen, Texas including all agents, employees, officers and elected officials.

Union – McAllen Police Association

Employee/Police Officer - Any employee appointed in accordance with Section 143.003, Texas Local Government Code except the Police Chief, non-probationary, full-time paid employee who regularly serves a police capacity. The Police Chief, and non-sworn employees are excluded from receiving wages or benefits as provided under this contract, and therefore are not included within the definition of Employee. Probationary employees shall receive benefits and wages as provided in this contract. However, probationary employees are exempt from the grievance procedures outlined in this contract, and their employment shall be at will.

Civil Service Commission - Civil Service Commission of the City of McAllen, Texas.

Chief - Chief of Police of the McAllen Police Department or his designee in his absence.

Civil Service Act – Texas Local Government Code Chapter 143, Municipal Civil Service.

Majority Bargaining Agent (M.B.A.) - The police employee group selected to represent all police officers employed by the City of McAllen, Texas. The employee group selected as the majority bargaining agent is the McAllen Police Association.

ARTICLE 19. SALARIES, LONGEVITY AND OTHER PAYS

Section 1. Salary Tables and effective dates of implementation are set for below, and are enforceable terms of this Labor Agreement.

FY 2016 Salary Table, effective first full pay period after October 1, 2015.

Upon completion of:

	1 year	2 years	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years	11 years	12 years
Police Officer III	24.10 4,178.94 \$50,147.39	24.44 4,237.43 \$50,849.25	25.34 4,393.23 \$52,718.87	25.65 4,446.67 \$53,360.08	26.53 4,598.90 \$55,186.86	26.54 4,601.15 \$55,213.86	26.55 4,603.40 \$55,240.86	27.50 4,766.84 \$57,202.08	27.50 4,766.84 \$57,202.08	27.60 4,784.54 \$57,414.48	27.61 4,786.79 \$57,441.48	28.01 4,854.31 \$58,251.86
Sergeant		28.86 5,004.03 \$60,048.44	30.09 5,216.96 \$62,603.63	30.41 5,271.29 \$63,255.55	31.46 5,454.77 \$65,457.24	31.48 5,457.02 \$65,484.24	31.49 5,459.27 \$65,511.24	32.51 5,635.17 \$67,622.11	32.51 5,635.17 \$67,622.11	32.64 5,658.25 \$67,899.11	32.65 5,660.50 \$67,926.11	33.06 5,734.41 \$68,813.81
Lieutenant				32.83 5,690.63 \$68,287.58	35.41 6,137.97 \$73,655.71	35.41 6,137.97 \$73,655.71	35.41 6,137.97 \$73,655.71	36.64 6,352.21 \$76,226.59	36.64 6,352.21 \$76,226.59	36.64 6,352.21 \$76,226.59	36.64 6,352.21 \$76,226.59	37.31 6,471.81 \$77,662.01
Captain					\$49.25 \$8,537.33 \$102,448.00	\$49.25 \$8,537.33 \$102,448.00	\$49.25 \$8,537.33 \$102,448.00	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$51.11 \$8,864.91 \$106,379.21

	13 years	14 years	15 years	16 years	17 years	18 years	19 years	20 years	21 years	22 years	23 years	24 years
Police Officer III	28.13 4,876.69 \$58,520.37	28.14 4,878.94 \$58,547.37	28.40 4,922.86 \$59,074.37	28.61 4,959.92 \$59,519.14	28.98 5,024.67 \$60,296.14	29.00 5,026.92 \$60,323.14	29.01 5,029.17 \$60,350.14	29.97 5,195.40 \$62,344.84	29.98 5,197.65 \$62,371.84	29.99 5,199.90 \$62,398.84	30.01 5,202.15 \$62,425.84	\$30.71
Sergeant	33.27 5767.37 69208.52	33.28 5769.62 69235.52	33.53 5813.54 69762.52	33.89 5875.60 70507.23	34.27 5940.35 71284.23	34.28 5942.60 71311.23	34.29 5944.85 71338.23	35.25 6111.07 73332.93	35.26 6113.32 73359.93	35.28 6115.57 73386.93	35.29 6117.82 73413.93	35.91 6238.81 74865.61
Lieutenant	37.33 6,471.83 \$77,662.00	37.33 6,471.83 \$77,662.00	37.33 6,471.83 \$77,662.00	38.02 6,591.45 \$79,097.41	38.02 6,591.45 \$79,097.41	38.02 6,591.45 \$79,097.41	38.02 6,591.45 \$79,097.41	38.86 6,736.62 \$80,839.44	38.87 6,738.87 \$80,866.44	38.89 6,741.12 \$80,893.44	38.90 6,743.37 \$80,920.44	40.11 6,952.081 \$83,425.01
Captain	\$51.14 \$8,864.93 \$106,379.20	\$51.14 \$8,864.93 \$106,379.20	\$51.14 \$8,864.93 \$106,379.20	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$53.81 \$9,331.21 \$111,974.41

FY 2017 Salary Table, effective first full pay period after October 1, 2016.

Upon completion of:

	1 year	2 years	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years	11 years	12 years
Police Officer III	\$24.83 \$4,303.41 \$51,640.88	\$24.85 \$4,307.91 \$51,694.88	\$25.60 \$4,437.41 \$53,248.88	\$25.87 \$4,483.57 \$53,802.88	\$26.61 \$4,613.07 \$55,356.88	\$26.64 \$4,617.57 \$55,410.88	\$26.67 \$4,622.07 \$55,454.88	\$27.50 \$4,766.84 \$57,202.08	\$27.50 \$4,766.84 \$57,202.08	\$27.50 \$4,766.84 \$57,202.08	\$27.71 \$4,806.74 \$57,626.88	\$27.73 \$4,806.74 \$57,680.88
Sergeant		\$30.05 \$5,209.10 \$62,509.16	\$30.80 \$5,338.60 \$64,063.16	\$31.07 \$5,384.76 \$64,617.16	\$31.81 \$5,514.26 \$66,171.16	\$31.84 \$5,518.76 \$66,225.16	\$31.86 \$5,523.26 \$66,279.16	\$32.61 \$5,657.26 \$67,887.16	\$32.61 \$5,657.26 \$67,887.16	\$32.61 \$5,657.26 \$67,887.16	\$32.90 \$5,703.43 \$68,441.16	\$32.93 \$5,707.93 \$68,495.16
Lieutenant				\$34.04 \$5,900.29 \$70,803.48	\$35.41 \$6,137.98 \$73,655.71	\$35.41 \$6,137.98 \$73,655.71	\$35.41 \$6,137.98 \$73,655.71	\$36.65 \$6,352.22 \$76,226.59	\$36.65 \$6,352.22 \$76,226.59	\$36.65 \$6,352.22 \$76,226.59	\$36.65 \$6,352.22 \$76,226.59	\$36.65 \$6,352.22 \$76,226.59
Captain					\$49.25 \$8,537.33 \$102,448.00	\$49.25 \$8,537.33 \$102,448.00	\$49.25 \$8,537.33 \$102,448.00	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40	\$50.08 \$8,681.20 \$104,174.40

	13 years	14 years	15 years	16 years	17 years	18 years	19 years	20 years	21 years	22 years	23 years	24 years
Police Officer III	\$28.26 \$4,899.07 \$58,788.88	\$28.29 \$4,903.57 \$58,842.88	\$28.80 \$4,991.41 \$59,896.88	\$28.82 \$4,995.91 \$59,950.88	\$29.57 \$5,125.41 \$61,504.88	\$29.60 \$5,129.91 \$61,558.88	\$29.62 \$5,134.41 \$61,612.88	\$30.85 \$5,347.24 \$64,166.88	\$30.85 \$5,347.24 \$64,166.88	\$30.85 \$5,347.24 \$64,166.88	\$30.90 \$5,356.24 \$64,274.88	\$30.93 \$5,360.74 \$64,328.88
Sergeant	\$33.46 \$5,800.26 \$69,603.16	\$33.49 \$5,804.76 \$69,657.16	\$34.00 \$5,897.60 \$70,711.16	\$34.02 \$5,897.10 \$70,765.16	\$34.77 \$6,026.60 \$72,319.16	\$34.79 \$6,031.10 \$72,373.16	\$34.82 \$6,035.60 \$72,427.16	\$36.05 \$6,248.43 \$74,981.16	\$36.05 \$6,248.43 \$74,981.16	\$36.05 \$6,248.43 \$74,981.16	\$36.10 \$6,257.43 \$75,089.16	\$36.13 \$6,261.93 \$75,143.16
Lieutenant	\$37.34 \$6,471.83 \$77,662.00	\$37.34 \$6,471.83 \$77,662.00	\$37.34 \$6,471.83 \$77,662.00	\$38.03 \$6,591.45 \$79,097.41	\$38.03 \$6,591.45 \$79,097.41	\$38.03 \$6,591.45 \$79,097.41	\$38.03 \$6,591.45 \$79,097.41	\$39.02 \$6,768.46 \$81,221.48	\$39.02 \$6,768.46 \$81,221.48	\$39.02 \$6,768.46 \$81,221.48	\$39.07 \$6,772.96 \$81,275.48	\$39.10 \$6,777.46 \$81,329.48
Captain	\$51.14 \$8,854.93 \$106,379.20	\$51.14 \$8,854.93 \$106,379.20	\$51.14 \$8,854.93 \$106,379.20	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$51.81 \$8,981.07 \$107,772.80	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40	\$52.48 \$9,097.20 \$109,166.40

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If, in FY 2017, McAllen civilian employees, not including employees of the McAllen Public Utilities Board, receive a wage increase, police officers covered by this Agreement will receive the same percentage wage increase to the FY 2016 salary levels plus one half percent (50 basis points), instead of the wage increases reflected on the pay table for FY 2017. However, if the wage increases reflected on the pay table for FY 2017 are higher than the civilian raise plus one half percent, then police officers covered by this Agreement will receive the increases reflected on the pay table. This paragraph shall not be triggered if the civilians receive no raise. In no event will any raise given to employees of the McAllen Public Utilities Board trigger this paragraph.

If, in FY 2018, 2019, or 2020, McAllen civilian employees, not including employees of the McAllen Public Utilities Board, receive a wage increase, police officers covered by this Agreement will receive the same percentage wage increase to then existing salary levels plus one half percent (50 basis points). Otherwise, salaries for FY 2018, 2019, and 2020 shall remain the same as the salary level established for FY 2017. This paragraph shall not be triggered if the civilians receive no raise. In no event will any raise given to employees of the McAllen Public Utilities Board trigger this paragraph.

ADDITIONAL PAY PROVISIONS

Section 2. Certification Pay

When an officer demonstrates achievement of one of the following certifications, the officer shall receive the following compensation consistent with each certification. Certification classification is not cumulative upon reaching the next higher classification. The officer shall receive only the compensation for the highest achieved certification and such will take effect the next full pay period following the officer's request for such compensation. Officers receiving education pay are not eligible for certification pay.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Intermediate Police Officer	\$25.00	\$31.25	\$37.50	\$43.75	\$50.00
Advanced Police Officer	\$50.00	\$62.50	\$75.00	\$87.50	\$100.00
Master Police Officer	\$100.00	\$125.00	\$150.00	\$175.00	\$200.00

Section 3. Education Pay

When an officer demonstrates achievement of one of the following degrees from an accredited college or university, the officer shall receive the following compensation consistent with the degree. Degree classification is not cumulative upon reaching the next higher degree. The officer shall receive only the compensation for the highest achieved degree and such will take effect the next full pay period following the officers request for such compensation.

Associate Degree	\$75.00
Baccalaureate Degree	\$150.00
Masters Degree	\$200.00
Doctorate Degree	\$250.00

Section 4. College Tuition Reimbursement

College tuition reimbursement will be governed by the Tuition Reimbursement Program, as currently in effect or as thereafter amended, for City employees not covered by a collective bargaining agreement.

Section 5. Assignment Pay

Officers while assigned to certain units of the department shall be eligible for assignment pay in accordance with this section. In the event of multiple assignments, officers shall be paid only the highest assignment pay level that the officer is eligible for.

Level 1: \$1,375.00 Annually

Level 1 shall be limited to officers assigned to the Crimes Against Persons, Crimes Against Property, Youth Crimes, Crime Scene Investigations, Auto Theft, Municipal Court Warrant Officers, Special Investigations Unit, Office of Professional Responsibility, FBI Task Force, Drug Task Force(s), the Staff Services Training Unit, Accident Reconstruction Investigators and Traffic Enforcement (motorcycle) Unit. .

Level 2 \$2,375.00 Annually

Level 2 shall be limited to Canine (K-9) Services, Emergency Services Unit, Explosive Ordinance Disposal Unit, and Field Training Officers.

Level 3 \$5,000 Annually

Level 3 shall apply to each person occupying an authorized position in the classification immediately below that of the Police Chief.

Section 6. On-Call Time

Officers shall be paid their applicable hourly wage when an officer, by order of the Chief of Police, is required to remain on call on the City's premises or so close thereto that he cannot use the time effectively for his own purpose and when time is spent predominantly for the City's benefit.

Section 7. Stand-By Time

The Department shall not implement a Stand-By policy.

Section 8. Night Shift Differential Pay

On the first full pay period after October 1, 2015, officers who actually work hours during the night shift hours of 10 p.m. to 6 a.m. shall receive additional compensation of \$1.00 per hour for hours worked by officers regularly scheduled to work the night shift.

Effective the first full pay period after October 1, 2016, the range of compensated hours above shall be 8:00 p.m. to 6:00 a.m.

Effective the first full pay period after October 1, 2018, the range of compensated hours above shall be 6:00 p.m. to 6:00 a.m.

This hourly pay shall not apply to any hours for night shift duty time compensated under other paid leaves (such as sick leave or vacation leave) and applies only to hours worked by officers regularly assigned to the night shift.

This hourly pay shall also not apply to night shift duty time that is part of a special assignment or any grant funded duty time.

Section 9. Update Service Credits

Effective January 1, 2016, the City agrees to update TMRS service credits.

ARTICLE 20. POLICE OFFICERS EQUIPMENT

Section 1. Upon hiring of new officers and upon qualification by the officer where required, the City agrees to equip such officers with the items specified in this article at no cost to the officers:

One (1) Service Pistol

Two (2) magazines for service pistol

One (1) magazine pouch for two (2) magazines for service pistol

One (1) Sam Brown belt

One (1) duty holster

Four (4) Belt Keepers
One (1) Uniform Badge
Departmental Identification Card
Keys necessary to perform assigned duties
One (1) body armor and front cover
One (1) set of handcuffs with key
One (1) handcuff case
One (1) portable radio (while on duty)
One (1) radio holder
One (1) nightstick and holder
One (1) flashlight and charger
Five (5) uniform shirts and pants
Two (2) long sleeve uniform shirts and one (1) tie
One (1) police rain coat and rubber boots
One (1) winter jacket

Section 2. The City shall provide cleaning of officer's assigned uniforms at no cost to the employee. Such cleaning service is limited to officers and investigators dress shirts and pants normally used in the performance of their duties (excluding jeans, knit shirts and pullovers) and five (5) uniforms (five shirts and five pants) a week for uniform services.

Section 3. The City shall replace all defective or damaged equipment provided that damage is a result of performance of duty.

ARTICLE 21. NONDISCRIMINATION

Section 1. The City agrees not to discriminate against any employee for their activity in behalf of, or membership in, the Union. Nothing in this Agreement shall interfere with any police officer's right to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex/gender, sexual harassment or disability with the Texas Commission on Human Rights or the Equal Employment Opportunity Commission.

ARTICLE 22. HOURS OF WORK AND OVERTIME COMPENSATION

Section 1. Employees covered by this Agreement are normally scheduled to work an 8 hour work day during a forty (40) hour week work cycle. The City of McAllen will allow the Union input on different work cycles but the implementation of different work cycle is the City of McAllen's exclusive management right.

All overtime shall be calculated in time by going to the nearest quarter hour, backward or forward as applicable.

Any officer required to attend in-service training equivalent to a full shift, shall have that period of time to serve as part of his normal shift, and shall not be required to double up on his work hours, unless an emergency exist.

The employee may accept an offer of compensatory time at the rate of time and one-half (1 ½) in lieu of cash compensation of overtime hours worked. Employees will be allowed to accumulate no more than 30 days of Comp-time, which can be carried over from year to year. No employee shall be forced to use his comp-time if the accumulated days are less than 30 days.

ARTICLE 23. DISCIPLINARY SUSPENSIONS

Section 1. Disciplinary suspensions and appeals shall be governed by the current applicable section of Chapter 143, Texas Local Government Code.

ARTICLE 24. PERSONNEL FILES AND DISCIPLINARY RECORDS

Section 1. The Director of Civil Service shall be the custodian of personnel files and will comply with the requirements of applicable law.

Section 2. Upon request of an officer, the officer's disciplinary records will be purged in accordance with the following guidelines:

- A. After sixty (60) months of discipline free service, the officer's choice of one record of counseling, warning, reprimand, or suspension of less than five (5) days.
- B. No more than one disciplinary action may be purged during a sixty (60) month period.
- C. Service time factored in one sixty (60) month period may not be applied to another sixty (60) month period.

ARTICLE 25. INVESTIGATION OF OFFICER MISCONDUCT

Section 1. The Chief of Police has established internal disciplinary procedures for the purposes of disciplining, suspending or terminating officers. Such disciplinary procedures as written on 07-01-2003 or as amended thereafter shall be followed by the Chief of Police and the Department in accordance with the Disciplinary procedure guidelines in the McAllen Police Department's Rules, Regulations, and Policy Manuel unless otherwise specified in this agreement.

Section 2. Any disciplinary action initiated by the Chief of Police shall be in accordance with the McAllen Police Department's Rules, Regulations, and Policy Manuel unless otherwise specified in this agreement.

ARTICLE 26. GRIEVANCE PROCEDURES

Section 1. Scope of Grievance Procedure. A grievance is a claim by an employee or the Union that the expressed provisions of this Agreement has been violated, but does not include any matter subject to the Police and Fire Civil Service regulations of the State of Texas and/or the City of McAllen, Texas. Any employee in the bargaining unit with a grievance shall first discuss such grievance with his supervisor up to and including the Police Chief prior to invoking the formal grievance procedure called for in this Article. If the informal grievance has not been resolved within five (5) business days after the Police Chief has received it, the formal grievance procedure set out in this Article may be invoked.

Step 1. A formal grievance must be initiated by an aggrieved employee. The aggrieved employee must reduce the entire grievance and all reasons to writing and present the signed, written, dated grievance along with the provisions of the Agreement which the grievant feels has been violated, to the Police Chief through the shift or Division Commander within fifteen (15) business days after the employee knew, or should have known with a reasonable exercise of diligence, the facts which gave rise to the grievance without regard to informal process described above (i.e., the five (5) business-day informal process is included in the fifteen (15) business-days described in this step. Otherwise, the grievance shall not be considered. During these fifteen days, the employee shall be pursuing the informal grievance process discussed in Section 1 above. The Police Chief or his designee shall have up to ten (10) business days to respond in writing to the grievance. Failure to respond shall be considered a denial.

Step 2. If the grievance is not satisfactorily settled in Step 1, the grievance shall be submitted to the City Manager or his designee and a copy filed with the Union within five (5) business days after receiving the written decision from the Chief of Police. The City Manager shall then attempt to resolve the grievance to the satisfaction of all parties concerned. The City Manager or his designee shall have up to ten (10) business days to respond in writing to the grievance. Failure to respond shall be considered a denial.

Step 3. If the grievance has not been satisfactorily resolved in Step 2, the final disposition occurs when the employee files the grievance with the Union Grievance Committee. If the Union Grievance Committee rejects the grievance, it shall notify the Police Chief that no further proceedings will be necessary. If the Union Grievance Committee accepts the grievance, the grievance may be submitted to a hearing examiner if the City and the Union request. If the grievance is referred to a hearing examiner, Chapter 143.057, Texas Local Government Code shall apply. Absent such agreement, the dispute may proceed to a District Court of the State of Texas pursuant to applicable law.

Section 2. Failure of the grievant to comply with the time limits set forth above shall result in settlement of the grievance based upon the last answer received by the grievant, and no further action may be taken by the aggrieved employee or the Union concerning the facts giving rise to the particular grievance involved. Time limits may only be extended by written agreement between the Police Chief and the Union President.

Section 3. Anything in the Agreement to the contrary notwithstanding, the following matters are not subject to the grievance procedure of this Agreement;

- A. Any grievance which is not filed in accordance with the provisions set forth above or which does not meet the definition of a grievance as set forth in Section 1 of the Article; or
- B. Any matter which would require a change from the wages, rates of pay, hours of work, grievance procedure, working conditions, and all other terms and conditions of employment as set forth in this Agreement; or
- C. Any matter which is not covered by this Agreement; or
- D. Any matter covered by City of McAllen City Charter of Ordinances, Status, Rules and Regulations or Constitutional Provisions; or
- E. Any matter subject to the State of Texas and/or City of McAllen Fire and Police Civil Service Rules and Regulations.

Section 4. The existence of this grievance procedure or the submission by an employee of any grievance to the grievance procedure provided in this Article shall not be a waiver of, or constitute a bar to any legal action or remedy an employee may have; provided, however, that the exhaustion of this grievance procedure shall be a condition precedent to the initiation of any further legal action by the affected employee.

Section 5. It is understood and agreed by all parties that "business days" does not include Saturdays or Sundays or holidays.

ARTICLE 27. DRUG TESTING

Section 1. Drug and alcohol testing of Police Officers shall be governed by the Department's Alcohol and Drug Policy, Section 68, McAllen Police Department Rules, Regulations, and Policies Manual, or as amended thereafter.

ARTICLE 28. POLICE OFFICER BILL OF RIGHTS

Section 1. Employees being questioned by the Office of Professional Responsibility (OPR) as an object of investigation which a reasonable person could believe will lead to removal or suspension shall be entitled to the following privileges insofar as feasible under the circumstances and upon request of the employee:

- A. Questioning at a police station unless another location is warranted by the facts;
- B. Written notification or statement of the nature of the investigation;
- C. Twenty-four (24) hours to respond in writing to allegations made against the officer;
- D. Twenty-four (24) hours advanced notification of OPR's intention to interview an officer about allegations made against the officer;
- E. Right to the presence of a representative of the officer's choice during questioning if so requested by the officer;
- F. Afforded all other rights given to police officers in Chapter 143, Texas Local Government Code;

Section 2. This article shall in no way infringe upon the Employer's right and power to fully investigate matters it deems important.

Section 3. This Article shall in no way infringe upon the Employer's right and power to discipline employees.

Section 4. If the Employer violates any of the provisions of this Article, such violation shall not affect the disciplinary action by the Employer unless such action was based solely upon facts derived from the violation of this Article.

ARTICLE 29. LABOR RELATIONS COMMITTEE

Section 1. Purpose: The Union and the City acknowledge that a harmonious working relationship is essential to the success of this Agreement, and the first basic tenet of such a working relationship involves cooperation and mutual recognition of each other's positions with regard to issues that effect officers. To such end, a Labor Relations Committee shall be established to mutually explore such issues and seek joint recommendations for resolutions to problems that may arise in the workplace. The Labor Relations Committee is meant to establish a more formal and institutionalized mechanism for reciprocal exploration of workplace issues in a positive manner. This forum is not for purposes of embarrassment or castigation of one party against the other. Moreover, this cooperation and mutual working relationship is advisory only and not meant to supplant management initiatives, prerogatives and decision making authority. Neither the Police Chief, the McAllen Police Officers' Union, nor the City is bound to implement any resolution recommended by the committee.

Section 2. Structure: The Labor Committee shall consist of six (6) members, three (3) who shall be appointed by the Union. There are no qualifications for appointment other than membership in the Union. Three (3) management appointments shall be made at the discretion of the Chief of Police.

Section 3. Meetings: The Committee shall meet regularly as needed at an agreed upon date, time and location. Special called meetings may be held in the interim at the call of the Chief and be limited to issues requiring special consideration. A quorum is not required for action to be authorized by committee. Meetings will not be conducted so as to be subject to the Open Meetings Act. The business of the meeting shall be conducted informally in an atmosphere conducive to the open, candid and constructive discussion of issues. The Committee shall be responsible for: Making recommendations on issues that effect officers, responding to requests for input from the Chief, the joint development presentation of the mandatory TCOLE continuing, in-service training course mandated by state law, proffering issues that effect the health and safety of officers, including but not limited to equipment, working conditions, and identifying and suggesting ways to improve the effectiveness of police officers, increase professionalism and develop pride in the police services of the City of McAllen. Individual disciplinary cases will not be discussed.

ARTICLE 30. NO STRIKE – NO LOCK OUT

Section 1. The Union agrees that it shall not authorize, ratify, encourage, or otherwise support any strike, slow-down, sick-out, nor any other form of work stoppage or interference with business of the City and shall cooperate fully with the City in preventing and/or halting any such action. The City agrees that it shall not authorize, ratify, encourage, or otherwise support any lock-out during the term of this Agreement.

Section 2. Should the Union violate this provision, the City reserves the right to assert any remedies available to it (at law, in equity, or otherwise) in such forum(s) as may be appropriate.

Section 3. The Union agrees that it will not support or assist in any manner any Union member or any other employee who violates this Article. Such agreement includes, but not limited to, the agreement to not provide representation for such person in the event of disciplinary action for violation of this Article and to not approve nor put forward any grievance on behalf of any such persons.

ARTICLE 31. IMPASSE PROCEDURES

Section 1. When an impasse occurs as defined by Chapter 174.151 of the Texas Local Government Code, the City and the Union shall proceed to mediate the disputes with an independent Federal Mediator.

ARTICLE 32. PARKING

Section 1. The City shall continue to provide the existing parking without cost to employees.

-END-


SIGNATURE & EXECUTION PAGE


**THE FOREGOING INSTRUMENT AS BEEN DULY NEGOTIATED,
REVIEWED, AND APPROVED BY EACH OF THE PARTIES IDENTIFIED
BELOW, AS REFLECTED BY THE SIGNATURES OF THE PARTY
REPRESENTATIVES:**

CITY OF MCALLEN, TEXAS

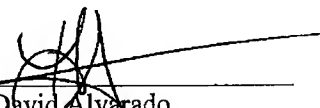
By: 
Mr. Jim Darling
Mayor

Dated: 9-29-15

By: 
Mr. Roel Rodriguez, P.E.
City Manager

By: 
Mr. Kevin Pagan
City Attorney

MCALLEN POLICE ASSOCIATION,

By: 
Mr. David Alvarado
President, MPA

Dated: 9-29-15


Mr. Javier Cavazos
Vice President, MPA



JAMES E. DARLING, Mayor
VERONICA WHITACRE, Mayor Pro Tem & Commissioner District 6
JAVIER VILLALOBOS, Commissioner District 1
JOAQUIN J. ZAMORA, Commissioner District 2
J. OMAR QUINTANILLA, Commissioner District 3
TANIA RAMIREZ, Commissioner District 4
VICTOR "SEBY" HADDAD, Commissioner District 5

ROEL "ROY" RODRIGUEZ, P.E., City Manager

August 1, 2019

CMRRR # 7019 1120 0000 7728 2016

The Honorable Ken Paxton
Attorney General of the State of Texas
Office of the Attorney General
c/o Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: Public Information Request W028772-072519

Dear General Paxton:

The City of McAllen ("City") is requesting a decision from the Office of the Attorney General under Texas Government Code § 552.301 of the Public Information Act (the "Act") regarding the City's authority to withhold certain information from public disclosure under the Public Information Act.

I. BACKGROUND

On July 24, 2019, the City received the following written request for public information:¹

Public Information Act, I hereby request the following records:

- 1. The total number of police use of force incidents, broken down by type of force used, between 2013-2018 (separated by year).*
- 2. The total number of people that police used force against, between 2013-2018 (separated by year).*
- 3. A copy of all complaints reported by civilians against police between 2013-2018.*
- 4. A copy of any documents indicating whether the civilian complaints identified in request #3 were sustained.*
- 5. The policy manual of the police department.*
- 6. The current union contract between the city and any police unions or police associations.*
- 7. All records regarding police shootings (including fatal police shootings, non-fatal police shootings and police shootings at a civilian that missed) between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths*

¹ See Exhibit "A" (written request)

resulting from the incident, the names of all officers involved, whether administrative investigations found the incidents to be justified under police department policy and any disciplinary actions taken against the officers as a result of the incident.

8. All records regarding civilian deaths or serious injuries resulting from police use of force between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries -or deaths resulting from the incident and the names of all officers involved.

The submitted information has been the subject of prior rulings issued by your office that were dispositive of the same information.² In Open Records Letter No. 2017-12845, your office determined that the City (1) may continue to rely on Open Records Letter 2015-01688 (2015) as a previous determination and withhold the identical information withheld under section 552.108(b)(1) of the Government Code in accordance with that ruling; (2) may withhold the information marked by your office not at issue in Open Records Letter No. 2015-01688 under section 552.108(b)(1) of the Government Code; and (3) release the remaining information.

In Open Records Letter No. 2018-18389, your office determined that the City (1) may continue to rely on Open Records Letter 2016-20227 (2016) as a previous determination and withhold or release information pertaining to the City's police department use of force policy in accordance with that ruling under section 552.108(b)(1) of the Government Code.

In Open Records Letter No. 2019-08555A, your office determined that the City may withhold the information marked by your office pertaining to the City's police department handbook on police chases and pursuits under section 552.108(b)(1) of the Government Code.

The information at issue in those instances pertain to the submitted information being withheld from the requestor. There has been no change in the law, facts, or circumstances on which your prior rulings were based. The City requests it may continue to rely on the previous determinations and continue to withhold the submitted information in accordance with those rulings.³

The City has released some of the information responsive to the request.⁴ However, notwithstanding the prior rulings issued by your office, the City is withholding and not disclosing to the

² See Exhibit "B" Open Records Letter No. 2017-12845 (authorizing the City to withhold information in the City's police department police manual as marked by the Attorney General's Office under section 552.108(b)(1) of the Government Code); Open Records Letter No. 2018-18389 (authorizing the City to withhold information in the City's police department's use of force policy in accordance with Open Records Letter No. 2016-20227 (2016) under section 552.108(b)(1) of the Government Code; Open Records Letter No. 2019-08555A (substituted ruling authorizing the City to withhold information in the City's police department's handbook on police chases and pursuits as marked by the Attorney General's Office under section 552.108(b)(1) of the Government Code).

³ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

⁴ The City has released information responsive to Request Nos. 3, 4, & 6. The City has made a good faith-effort to relate the request for information it holds or to which it has access for item numbers 1, 2, 7, & 8 and has determined that it does not have information responsive to that portion of the request.⁴ See Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). The Public Information Act requires government entities to make any record available that is not excepted from disclosure. However, the Act does not require a governmental body to disclose information that did not exist when a request for information was received or to create responsive information.

requestor the policy manual of the police department (Request No. 5) responsive to the above request because some or all of the submitted information is subject to one or more of the following exceptions to mandatory public disclosure under the Public Information Act in Texas Government Code, Chapter 552, Subchapter C, §552.101 through §552.158.

II. ARGUMENTS & AUTHORITIES

The City has withheld the submitted information because it is subject to one or more exceptions to mandatory public disclosure under the Public Information Act.⁵

1. CERTAIN LAW ENFORCEMENT, CORRECTIONS, AND PROSECUTORIAL INFORMATION (TEX. GOV'T CODE § 552.108)

Section 552.108(b)(1) excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]”⁶

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.”⁷ Further, your office has concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency.⁸

The McAllen Police Department Rules, Regulations and Policy Manual is created, maintained and issued by the McAllen Police Department. The police department’s rules, regulations and policy manual is a controlled item and is department property issued to the department’s employees. The police department does not and has not publicly posted or released the rules, regulations and policy manual to any person other than a department employee. This policy and procedure manual, in current and previous editions, are collected from separating employees of the department. In distributing the information contained in the manual, the police department contends that the practices detailed by the policy are not commonly known practices, procedures and/or techniques and are maintained solely for internal use. A common understanding of police practices and procedures are not outlined in this manual and this internal record is excepted from public disclosure.

The City is not disclosing the submitted information responsive to the request. The submitted information contains detailed operation guidelines and procedures for the police department’s use and its release would interfere with law enforcement efforts because it would reveal police specific law enforcement equipment and techniques and strategies for pursuing individuals in emergency situations. A potential criminal could use the information at issue to predict, counteract, avoid detection, and circumvent police departmental safeguards, detect weaknesses, plan around generally-utilized strategies, and undermine the police department’s ability to protect the public and efforts to effectuate the laws of this State. Further, releasing the submitted information would unduly interfere with law enforcement and crime

See Econ. Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

⁵ See Exhibit “C” (police department policy manual).

⁶ Gov’t Code § 552.108(b)(1).

⁷ *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App. — Austin 2002, no pet.).

⁸ See, e.g., Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

prevention by providing an individual with an advantage in confrontations with the city's police officers and would increase the chance of evading or resisting arrest. Releasing the submitted information could endanger the lives and safety of the police officers.

Therefore, the submitted information may be withheld under section 552.108(b)(1) of the Government Code as an applicable exception to required public disclosure.

III. CONCLUSION

For all the above-stated reasons, the City respectfully requests a decision it may withhold the submitted information because it is excepted from mandatory public disclosure.

A copy of this letter has been sent to the requestor in compliance with sections 552.301(d) of the Texas Government Code.

Please contact me at (956) 681-1090 or via e-mail at egarcia1@mcallenpd.net if your office requires any further information.

Respectfully submitted,



Evaristo Garcia, Jr.
Assistant City Attorney

EG/yr

Enclosures: Exhibits A, B & C

Cc: Requestor- (without enclosures)

Samuel Sinyangwe
MuckRock News
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